

EXHIBIT B

Phillip Low

Boulder, CO

January 14, 2006

1

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

LP MATTHEWS, LLC,)
Plaintiff,)
v.)
BATH & BODY WORKS, INC.;) CASE NO.:
LIMITED BRANDS, INC.;) 04-CV-01507 SLR
KAO BRANDS CO. (f/k/a THE)
ANDREW JERGENS COMPANY);)
and KAO CORPORATION,)
Defendants.)

DEPOSITION OF PHILLIP LOW

Saturday, January 14, 2006

Reported by:

Craig L. Knowles, CM

Henderson Legal Services
(202) 220-4158

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	2		4
1	Boulder, Colorado	1	APPEARANCES (Cont'd)
2	Saturday, January 14, 2006	2	
3		3	For Defendants Bath & Body Works and Limited
4	Deposition of PHILLIP LOW, a witness	4	Brands:
5	herein, called for examination by counsel for	5	John F. Ward, Esquire
6	Defendants in the above-entitled matter, pursuant	6	WARD & OLIVO
7	to notice and the Federal Rules of Civil Procedure,	7	708 Third Avenue
8	the witness being previously duly sworn by CRAIG	8	New York, New York 10017
9	KNOWLES, a Notary Public in and for the State of	9	212-697-6262
10	Colorado, taken at the Boulder Marriott, Telluride	10	
11	Room, 2660 Canyon Boulevard, Boulder, Colorado, at	11	
12	9:23 a.m., on Saturday, January 14, 2006, and the	12	
13	proceedings being taken down in Stenotype by CRAIG	13	
14	KNOWLES and transcribed under his direction.	14	
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16		16	
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3	For Plaintiff:	3	PHILLIP LOW
4	Robert A. Auchter, Esquire	4	By Mr. Ward..... 6
5	Jason R. Buratti, Esquire	5	By Mr. Baxter..... 92
6	ROBINS, KAPLAN, MILLER & CIRESI, LLP	6	
7	Suite 1200	7	E-X-H-I-B-I-T-S
8	1801 K Street, Northwest	8	LOW EXHIBIT NO. PAGE NO.
9	Washington, D.C. 20006-1307	9	1 Copy of Assignment, LPM 000012/14 38
10	202-775-0725	10	2 One-page handwritten document PL 0002 39
11		11	3 Agreement PL 0001 44
12	For Defendants KAO Corp. and KAO Brands:	12	4 Promissory Note PL 0003/4 47
13	Stephen G. Baxter, Ph.D., Esquire	13	5 Copy of envelope from Mr. Brady PL 00005 48
14	Richard L. Chinn, Ph.D., Esquire	14	6 Letter, Low to Ingram, 6/16/93 52
15	OBLON, SPIVAK, McCLELLAND, MAIER &	15	7 Letter, Greenspan to Low, 6/26/93,
16	NEUSTADT, P.C.	16	PL 0007 54
17	1940 Duke Street	17	8 Envelope, Greenspan to Low, 6/21/93 57
18	Alexandria, Virginia 22314	18	9 Undated Letter, Greenspan to Low PL 0009 75
19	703-413-3000	19	10 Copy of check stub PL 0010 78
20		20	11 Three-page document, 11/17/89 DG6001/03 109
21		21	12 Two-page document DG3271/72 113
22		22	

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	6		8
1 PROCEEDINGS:		1 Q. Okay. Before that, school?	
2 - - -		2 A. Before that I was in school.	
3 Whereupon,		3 Q. Did you graduate from high school?	
4 PHILLIP LOW,		4 A. I did.	
5 called for examination by counsel for Defendants		5 Q. Any college?	
6 and, having been previously duly sworn to the		6 A. None.	
7 truth, the whole truth and nothing but the truth,		7 Q. Any technical training?	
8 was examined and testified further upon his oath		8 A. Nope.	
9 as follows:		9 Q. It's my understanding that you are the man	
10 - - -		10 who had the idea to use orange in a cleaning	
11 EXAMINATION BY COUNSEL FOR DEFENDANT		11 composition, is that true?	
12 BATH & BODY WOKS and LIMITED BRANDS		12 A. That's true.	
13 BY MR. WARD:		13 Q. Can you tell me how that came about, how'd	
14 Q. Good morning, Mr. Low.		14 you get that idea?	
15 A. Good morning.		15 A. I was installing windows, and when you	
16 Q. My name is John Ward, I'm with Ward & Olivo		16 install windows, you have polyurethane type	
17 in New York, and I represent Limited Brands and		17 sealants that you use, two-part. And you get it	
18 Bath3 & Body Works in this action.		18 all over your hands.	
19 Have you ever been deposed before?		19 Q. Tell me, what --	
20 A. Yes.		20 A. Nothing really cleans it off.	
21 Q. Would you tell me what were the		21 Q. Take me through the process. So you are	
22 circumstances of that?		22 installing a window.	
	7		9
1 A. It was a building lawsuit.		1 A. Right.	
2 Q. Were you the plaintiff?		2 Q. You've got a frame. Run us through it.	
3 A. We were.		3 A. Well, you have a window opening. You take	
4 Q. How did it turn out?		4 out the wood sashes. It depends how the window is	
5 A. We won.		5 measured, how the new system is going to go in.	
6 Q. Good. Just so you know, you know, I'm		6 You are from the east, right?	
7 going to ask a series of questions, you'll answer.		7 Q. Yes. You can tell, huh?	
8 You can't nod or make sounds that the court		8 A. You have a lot of wood windows, a lot of	
9 reporter can't record for us.		9 historic looking products, right.	
10 And any time you feel like you'd like to		10 Q. Yes, indeed.	
11 take a break, say the word.		11 A. Okay. What we will do is, we will take out	
12 A. Okay.		12 the wooden sashes, leave the buck frame in. Then	
13 Q. What do you do for a living?		13 what we do is, we have a system that is	
14 A. I have a home improvement and construction		14 historically replicated to cap over all of the old	
15 company.		15 wood on the outside. And it's a new window frame	
16 Q. How long have you had that?		16 that goes in on the inside and has new sashes and	
17 A. Ten years.		17 everything else. Then we seal up the outside, sort	
18 Q. What did you do before that?		18 of a panning system out there. We seal up the	
19 A. I was a subcontract window installer.		19 panning system to make it weather tight. We put	
20 Q. Do you recall how long you were doing that		20 trims on the inside and seal that up to make it	
21 for?		21 weather tight.	
22 A. Yeah, I have been doing that since 1979.		22 Q. All right.	

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1 A. The caulks that we have to use, they
 2 need to have a very high flexibility rate. Have to
 3 be real durable stuff.
 4 Q. The reason is?
 5 A. So that they last 20 years. Ten year
 6 warranty, but if you go with a little bit stronger
 7 product, you don't -- you can't use a regular latex
 8 household type product. You have to use something
 9 that has kind of more your industrial adhesions,
 10 movements and those kind of things.
 11 Q. Okay.
 12 A. So that is the window process.
 13 Q. Thanks. I got new windows coming in, so I
 14 want to know what I'm looking forward to.
 15 A. Yours might be different. This is
 16 commercial. You may get vinyls.
 17 Q. Well, we'll see. Thank you, anyhow. So
 18 now we are up to, did you say polyurethane?
 19 A. Yeah, polyurethane type sealants.
 20 Q. What do you do?
 21 A. Use a caulking gun, they come in tubes, use
 22 a caulking gun or there's big sausages, different

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12

1 does the stuff start to harden?
 2 A. It's an oil based product so it stains, you
 3 get stains on your hands. It can last up to a week
 4 if you don't try to use something to take it off.
 5 Q. Okay.
 6 A. The only things we found that works is
 7 toluene or acetone or gasoline, the only stuff that
 8 removes this stuff.
 9 Q. Stuff like Goop doesn't work?
 10 A. No, Goop didn't work, pumices didn't work,
 11 none of that stuff works.
 12 Q. I think we are probably up on the orange
 13 part?
 14 A. We are up to the orange part. Okay?
 15 Q. Unless you tell me otherwise.
 16 A. This was like 10:30 at night and it was the
 17 first week in December because the Parade of lights
 18 was going on down below.
 19 Q. Do you remember the year?
 20 A. Yeah, it was 1988.
 21 Q. Okay?
 22 A. We were -- actually, I was working by

11

13

1 means of putting this stuff on. It gets all over
 2 you because you are using your fingers to tool it.
 3 Q. Fill in the spots?
 4 A. Yeah, when you are caulking, it's like
 5 icing on the cake. It's the pretty part, yet it's
 6 the function part, too, because it weatherproofs,
 7 stains.
 8 You are also using a product called Fooz,
 9 which is manufactured out of parts, vinyl parts
 10 that you use to fill cracks and crevices and stuff
 11 like that, hardens up.
 12 All this stuff gets on your hands, because,
 13 you know, even ink gets on your hands, I don't know
 14 how it does, but it gets everywhere.
 15 Q. Sure.
 16 A. That is how the caulking gets on your
 17 hands.
 18 Now with respect to the orange product, is
 19 that where you want to go.
 20 Q. In a second.
 21 A. Okay.
 22 Q. Tell me. You have the caulk on your hands,

1 myself, 10:30 at night, trying to caulk these
 2 windows up.
 3 Q. Obviously it was your business.
 4 A. My business.
 5 Q. I understand that part.
 6 A. I was trying to caulk the windows, 10th
 7 floor, and my wife packed me a lunch and the only
 8 thing I had left to eat was an orange, I needed
 9 something.
 10 Q. Sure.
 11 A. Work late obviously, wanted to get done.
 12 So I went to eat the orange, I'm peeling the
 13 orange, and I notice all this black stuff all over
 14 the orange peel. I'm thinking, now I got to go --
 15 something is contaminating my food. I didn't know
 16 what it was.
 17 Q. Right.
 18 A. I'm sitting here peeling this orange and
 19 it's turning black.
 20 Q. The rind is turning back?
 21 A. Yes, the orange, everything I'm touching on
 22 the orange is starting to turn black.

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<p>1 Q. So you can't even eat your orange now, you 2 are stuck?</p> <p>3 MR. BURATTI: Object to form.</p> <p>4 A. So I go and I wash my hands and I notice 5 that my fingertips are clean.</p> <p>6 BY MR. WARD:</p> <p>7 Q. Uh-huh.</p> <p>8 A. So I went back and I'm like what the heck 9 happened here. So I go back and I start looking at 10 the orange, and I started messing with the orange 11 peels. The orange juice, itself. Everything else. 12 And found out if I squeezed the rind on my hand, 13 that stuff dissolved, loosened up and I could 14 actually wipe it off.</p> <p>15 Q. You started to play around with it?</p> <p>16 A. Right.</p> <p>17 MR. BURATTI: Objection to form.</p> <p>18 BY MR. WARD:</p> <p>19 Q. What happened next.</p> <p>20 A. Obviously, I was excited because I thought 21 I could create a natural cleaning product that 22 would remove stuff off your hands that nothing else</p>	<p>14</p> <p>1 was doing, just like we all were. I didn't want to 2 be a windows installer forever. There didn't seem 3 to be any money in it. So I thought you know, I 4 called him up and I said you can't believe what I 5 just discovered.</p> <p>6 Q. Do you recall, was he your personal 7 accountant or the business's accountant?</p> <p>8 A. He was both. Well, you know at the time my 9 personal was my business.</p> <p>10 Q. Go ahead. So you give him a call. Do you 11 remember when that was?</p> <p>12 A. It would have been the next day.</p> <p>13 Q. Really. You were that excited?</p> <p>14 A. Oh, yeah, absolutely.</p> <p>15 MR. BURATTI: Objection to form.</p> <p>16 BY MR. WARD:</p> <p>17 Q. Okay.</p> <p>18 A. So anyway, I called him up and I told him 19 what the deal was, that I had found and he said, 20 Phil, you're a genius. And he said, let's -- I 21 said, you know, you got -- you're a chemist kind of 22 guy, maybe we can make a hand cleaner, some sort of</p>
<p>15</p> <p>1 would.</p> <p>2 Q. So even this first time it was working 3 better than the things you traditionally used to 4 clean your hands?</p> <p>5 MR. BURATTI: Objection. Ambiguous.</p> <p>6 A. I don't know, I didn't say that.</p> <p>7 BY MR. WARD:</p> <p>8 Q. I'm asking, not trying to tell.</p> <p>9 A. All I did, all I did was find that the 10 orange oil removed the stuff off my hands.</p> <p>11 Q. Were you surprised?</p> <p>12 A. I was surprised.</p> <p>13 Q. So what did you do about it?</p> <p>14 A. Well, then what I did is I called up Doug 15 Greenspan.</p> <p>16 Q. Why'd you do that?</p> <p>17 A. Because Doug, Doug and I had a fairly good 18 relationship. He was our accountant. And we knew 19 a little bit of his background. I knew that he had 20 an M.B.A. in business, and I knew that he had a 21 minor in chemistry, and I knew that he was looking 22 for, you know, something other than doing what he</p>	<p>15</p> <p>1 a natural cleaner that's going to work to take this 2 stuff off of our construction industry's hands.</p> <p>3 Q. All right. So what happened next?</p> <p>4 A. Then --</p> <p>5 Q. You talk on the phone, then --</p> <p>6 A. Yeah, well, I -- I hooked up with him.</p> <p>7 That weekend, because it was -- I believe it was 8 a -- the Parade of Lights goes on Friday nights and 9 on Saturday. This would have been a Friday night, 10 caution I went over to his place on Saturday, so I 11 went on over there.</p> <p>12 Q. Okay.</p> <p>13 A. And we proceeded to try to find some orange 14 oil so that we could start making concoctions.</p> <p>15 Q. You didn't bring a bag of oranges over with 16 you?</p> <p>17 A. You know, we may have gotten a bag of 18 oranges. You know, I know that I had shown to him 19 that it actually worked, and he thought -- the 20 citric acid in there would naturally dissolve 21 petroleum products. Oh, you're a genius, I never 22 thought of that. So, anyway.</p>

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<p style="text-align: right;">26</p> <p>1 I knew, I would say try this and let me know what 2 you think.</p> <p>3 Q. Do you remember the volume, the percentages 4 of this product, how much orange oil was in it, how 5 much of the other components?</p> <p>6 MR. BURATTI: Objection. Compound.</p> <p>7 A. You know, okay. So let me ask you a 8 question. What -- you need to clarify what it is 9 you are asking one more time?</p> <p>10 BY MR. WARD:</p> <p>11 Q. Yes, probably the easiest way to get at it 12 is, do you remember how much of the composition was 13 orange oil?</p> <p>14 MR. BURATTI: Objection. Vague.</p> <p>15 A. What we did is we started out with, we kind 16 of used the pH system, okay. And we would use I 17 would say 50 percent orange oil in the composition 18 to see what happened, and then we would drop it 19 down percentagewise. I think we even went down to 20 1 percent, just a small amount of orange oil, based 21 on my wife's findings, we needed to figure, well, 22 maybe that's too much.</p>	<p style="text-align: right;">28</p> <p>1 A. No, I didn't record anything. That would 2 have been Doug.</p> <p>3 BY MR. WARD:</p> <p>4 Q. After somebody tried it for you you told 5 Doug what happened?</p> <p>6 MR. BURATTI: Objection to form.</p> <p>7 A. Yes, that is what happened. That didn't 8 work here, or it needs to be stronger, or it needs 9 to be less, or this one seems to burn and this one 10 didn't.</p> <p>11 Q. And do you know if he kept records?</p> <p>12 MR. BURATTI: Objection.</p> <p>13 A. I don't know how he kept records, I 14 couldn't answer that.</p> <p>15 BY MR. WARD:</p> <p>16 Q. Did you ever see him write down the 17 information you gave him?</p> <p>18 A. I saw him write down the information and I 19 saw him write down formulas. That was his --</p> <p>20 Q. He was the chemist, right?</p> <p>21 MR. BURATTI: Object to form.</p> <p>22 A. Right.</p>
<p style="text-align: right;">27</p> <p>1 But, you know, from the small amount on up 2 until we found where, A, pH worked well and, B, it 3 worked relatively well, cleaned off what it was we 4 wanted to clean off.</p> <p>5 Q. Do you remember where that point was?</p> <p>6 MR. BURATTI: Objection.</p> <p>7 A. I don't remember that point. That's Doug's 8 deal.</p> <p>9 BY MR. WARD:</p> <p>10 Q. Do you recall ever testing it on anybody 11 other than the family?</p> <p>12 A. No animals.</p> <p>13 MR. BURATTI: Objection --</p> <p>14 A. No animal testing.</p> <p>15 BY MR. WARD:</p> <p>16 Q. Uh-huh. I understand.</p> <p>17 A. I had a friend that -- I had a friend that 18 was working with me who used it from a window 19 installation standpoint, so --</p> <p>20 Q. When you did these tests do you remember if 21 you recorded the results in any way?</p> <p>22 MR. BURATTI: Objection to form.</p>	<p style="text-align: right;">29</p> <p>1 (Discussion off the record.)</p> <p>2 BY MR. WARD:</p> <p>3 Q. Tell me, at this point did you and 4 Greenspan have any sort of an agreement?</p> <p>5 MR. BURATTI: Objection. Vague.</p> <p>6 A. I don't understand what you mean.</p> <p>7 BY MR. WARD:</p> <p>8 Q. Well, you are working together to make a 9 product, correct?</p> <p>10 A. Correct.</p> <p>11 Q. You are working together to get a patent 12 application on file, correct?</p> <p>13 A. Correct.</p> <p>14 Q. Did you have some sort of an understanding 15 of how you were going to split proceeds, if any?</p> <p>16 MR. BURATTI: Objection. Vague.</p> <p>17 A. We created I think a corporation called 18 Midwhelm.</p> <p>19 Q. Could you spell that for us?</p> <p>20 A. M-I-D-W-H-E-L-M. Midwhelm, something like 21 that. We didn't want to be an overwhelm and we 22 didn't want to be and underwhelm, so we figured</p>

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	86		88
1	much as you want.	1	one percent level?
2	THE WITNESS: I can read as much as I want?	2	A. I don't remember.
3	MR. BURATTI: The paragraph refers to tests	3	MR. BURATTI: Objection.
4	in the patent, I just wanted to alert you, you are	4	THE WITNESS: Sorry. I'll slow down for
5	allowed to read more to get up to speed.	5	you.
6	THE WITNESS: Okay.	6	MR. BURATTI: Objection to form.
7	MR. BURATTI: You don't have to. You can	7	MR. WARD: The reporter will catch up with
8	hear the question first.	8	us. Don't worry.
9	THE WITNESS: Roll with the question.	9	MR. AUCHTER: It's not fair to the
10	BY MR. WARD:	10	reporter.
11	Q. Do you remember how you came up with that	11	BY MR. WARD:
12	five percent figure?	12	Q. Let's go to Column 9. Just a quick
13	MR. BURATTI: Object to the form.	13	question. The last page. Do you see line 4,
14	A. Well, as I said earlier, we took from	14	Claim 1 starts on line 4.
15	probably 50 percent orange oil down to maybe even	15	A. Okay.
16	one percent and found -- found it worked for what	16	Q. Do you want to read that to yourself?
17	we needed it to work.	17	A. Okay.
18	And with respect to cosmetics, it would	18	Q. Claim 1 discloses a composition that has
19	have had to do with the burning of my wife's	19	three ingredients.
20	eyelids.	20	MR. BURATTI: Objection. Sorry.
21	BY MR. WARD:	21	BY MR. WARD:
22	Q. That is when the orange oil --	22	Q. The first ingredient is identified as
	87		89
1	A. There was too much.	1	between 5 and 60 percent by volume orange oil. The
2	Q. There was too much orange oil in that	2	second ingredient is a pharmaceutically acceptable
3	initial sample?	3	moisturizer and the third ingredient is an
4	A. Right.	4	emulsifying agent. Do you see that?
5	MR. BURATTI: Objection. Vague.	5	A. Well, you had me read section 4. That
6	BY MR. WARD:	6	doesn't say that at all.
7	Q. Do you remember was that a 50 percent	7	Q. I said starting with line 4.
8	sample?	8	A. That is number 4, isn't it? Oh, sorry.
9	A. I don't believe that was 50, no. But I	9	Q. That's okay.
10	can't -- I don't remember what percentage that was.	10	(Witness examines document.)
11	Q. You said you went down all the way to	11	A. It's pretty much mumbo jumbo to me. What
12	one percent?	12	do you want to know?
13	A. We went almost down to nothing and then	13	BY MR. WARD:
14	back up to see where the effect started in.	14	Q. I want to know for each of these
15	Q. Was it your conclusion that the effects	15	ingredients, we will go through them one at a time,
16	started in at five percent?	16	whether it was your idea, Greenspan's idea or a
17	MR. BURATTI: Objection misleading.	17	joint idea. Okay?
18	A. As far as any conclusions, I didn't come to	18	The first idea is five percent to
19	any conclusions, all I was after was my specific	19	60 percent orange oil?
20	target was for caulking. Me personally.	20	MR. BURATTI: Objection. Calls for a legal
21	BY MR. WARD:	21	conclusion.
22	Q. Sure. Do you remember what happened at the	22	A. That would have been between the two of us.